

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

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TY:

### Legend

Taxpayer =

Taxpayer =

FC =

Country A =

Year 1 =

Year 2 =

Year 3 =

Tax Firm B =

Tax Firm C =

Tax Firm D =

Dear :

This is in response to a letter dated January 11, 2013, and supplemental documentation, submitted by Taxpayers' authorized representative, that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") for

Taxpayers to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code ("Code") and Treas. Reg. §1.1295-3(f) with respect to Taxpayers' investment in FC.

The ruling contained in this letter is based upon information and representations submitted on behalf of Taxpayers by their authorized representatives, and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of this request for ruling, such material is subject to verification on examination. The information submitted in the request is substantially as set forth below.

## FACTS

Taxpayers are married U.S. citizens who own an interest in FC, a publicly-traded foreign corporation incorporated in Country A that constitutes a passive foreign investment company (PFIC) within the meaning of section 1297 of the Code. Taxpayers initially acquired their interest in FC (both directly and indirectly) in Year 1.

From Year 1 to Year 2, Taxpayers engaged Tax Firm B for the preparation of their U.S. tax return. Since Year 2, Taxpayers have engaged Tax Firm C for the preparation of their U.S. tax return. Tax Firm B and Tax Firm C are qualified to provide tax advice on international tax matters, including issues related to PFICs. Tax Firm B and Tax Firm C advised Taxpayers with regard to U.S. federal income tax matters, including with respect to Taxpayers' ownership of FC. Taxpayers relied on Tax Firm B and Tax Firm C to provide advice with respect to filing and reporting requirements in general, as well as any elections or statements that would be necessary to elect specific tax treatment. Neither Tax Firm B nor Tax Firm C identified FC as a PFIC and, as such, did not advise Taxpayers regarding any potential PFIC reporting requirements or available elections.

In Year 3, another shareholder in FC contacted Taxpayers about the potential PFIC status of FC, which led them to consult further with Tax Firm C. After discussing the issue with their tax advisors, Taxpayers retained Tax Firm D to help them come into compliance. Based on the determination that FC had likely been a PFIC since before Year 1, Taxpayers requested Tax Firm D to submit a private letter ruling request on their behalf to make a retroactive QEF election with respect to FC under Treas. Reg. §1.1295-3(f), retroactive to Year 1.

Taxpayers have submitted an affidavit, under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date, including the roles of Tax Firm B and Tax Firm C. Taxpayers provided information regarding their ownership of FC to Tax Firm B and Tax Firm C, and Tax Firm B and Tax Firm C had access to all relevant information with respect to FC. Taxpayers represent that, in the relevant years: (1) FC was not identified as a PFIC; and (2) Taxpayers did not receive any advice regarding the availability of a QEF election with respect to FC. Taxpayers

have submitted affidavits from Tax Firm B and Tax Firm C corroborating the representations made by the Taxpayers with respect to the discovery of FC's PFIC status.

Taxpayers have paid an amount sufficient to eliminate any prejudice to the United States government as a consequence of an inability to file amended returns, in accordance with a closing agreement between Taxpayers and the Commissioner. Further, Taxpayers filed an amended return for each of their subsequent taxable years affected by the retroactive election, if any.

Taxpayers represent that, as of the date of this request for ruling, the PFIC status of FC has not been raised by the IRS on audit for any of the taxable years at issue.

#### RULING REQUESTED

Taxpayers request the consent of the Commissioner to make a retroactive QEF election with respect to FC under Treas. Reg. §1.1295-3(f), retroactive to Year 1.

#### LAW

Section 1295(a) of the Code provides that a PFIC will be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under section 1295(b) applies to such PFIC for the taxable year and (2) the PFIC complies with such requirements as the Secretary may prescribe for purposes of determining the ordinary earnings and net capital gains of such company.

Under section 1295(b)(2), a QEF election may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for such taxable year. To the extent provided in regulations, such an election may be made after such due date if the taxpayer failed to make an election by the due date because the taxpayer reasonably believed the company was not a PFIC.

Under Treas. Reg. §1.1295-3(f), a shareholder may request the consent of the Commissioner to make a retroactive QEF election for a taxable year if:

1. the shareholder reasonably relied on a qualified tax professional, within the meaning of Treas. Reg. §1.1295-3(f)(2);
2. granting consent will not prejudice the interests of the United States government, as provided in Treas. Reg. §1.1295-3(f)(3);
3. the request is made before a representative of the Internal Revenue Service raises upon audit the PFIC status of the corporation for any taxable year of the shareholder; and
4. the shareholder satisfies the procedural requirements of Treas. Reg. §1.1295-3(f)(4).

The procedural requirements include filing a request for consent to make a retroactive election with, and submitting a user fee to, the Office of the Associate Chief Counsel (International). Treas. Reg. §1.1295-3(f)(4)(i). Additionally, affidavits signed under penalties of perjury must be submitted that describe:

1. the events that led to the failure to make a QEF election by the election due date;
2. the discovery of such failure;
3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on such professional.

Treas. Reg. §§1.1295-3(f)(4)(ii) and (iii).

## CONCLUSION

Based on the information submitted and representations made with Taxpayers' ruling request, we conclude that Taxpayers have satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to Taxpayers to make a retroactive QEF election with respect to FC for Year 1, provided that Taxpayers comply with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

We will, accordingly, approve a closing agreement with Taxpayers with respect to those issues affecting their tax liability on the basis set forth above. The necessary closing agreement for Taxpayers has been prepared in triplicate and is enclosed. In pursuance of our practice with respect to such agreements, the agreement contains a stipulation to the effect that any change or modification of applicable statutes enacted subsequent to the date of this agreement and made applicable to the taxable period involved will render the agreement ineffective to the extent that it is dependent upon such statutes.

Except as specifically set forth above, no opinion is expressed or implied concerning the U.S. federal tax consequences of the facts described above under any other provision of the Code.

This private letter ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter ruling must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayers' authorized representative.

Sincerely,

Jeffery G. Mitchell  
Branch Chief, Branch 2  
Office of Associate Chief Counsel  
(International)